

AMENDED IN ASSEMBLY AUGUST 28, 2015

AMENDED IN ASSEMBLY JULY 15, 2015

SENATE BILL

No. 387

Introduced by Senator Jackson

February 24, 2015

An act to amend Sections 6001, 6026.5, 6060.2, 6086.1, 6086.15, 6090.6, 6140, ~~and 6145~~ 6145, 6168, 6200, 6232, and 6234 of, ~~and to~~ add Section 6026.11 to, and to repeal and add ~~Section~~ Sections 6026.7 and 6140.16 of, the Business and Professions Code, and to amend Sections 6252, 11121, and 11121.1 of the Government Code, relating to ~~attorneys~~: the State Bar.

LEGISLATIVE COUNSEL'S DIGEST

SB 387, as amended, Jackson. State Bar: attorneys: annual membership ~~fees~~: *fees: meetings: public records*.

Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation. The State Bar is governed by a board of trustees. Existing law authorizes the board, among other duties, to aid in all matters pertaining to the improvement of the administration of justice, including all matters that may advance the professional interests of the members of the State Bar.

Existing law requires the State Bar to issue an Annual Discipline Report describing the performance and condition of the State Bar discipline system. Existing law requires the report to cover the previous calendar year and to include accurate and complete descriptions of, among other things, the existing backlog of cases within the discipline system and a description of the programs at the State Bar directed at preventing acts warranting discipline. *Existing law requires the board*

to appoint a lawyer admitted to practice in California to serve as chief trial counsel. The Office of the Chief Trial Counsel, which is responsible for reviewing charges of lawyer misconduct, investigates and prosecutes complaints about attorneys.

This bill would revise the content of the information in the report. The bill would additionally require the backlog of cases to include other matters opened in the Office of the Chief Trial Counsel and pending beyond 6 months after receipt, as specified.

Existing law, ~~beginning January 1, 2015,~~ until January 1, 2016, requires the board to charge an annual membership fee for active members of up to \$315 for 2015.

This bill would, until January 1, 2017, require the board to charge that annual membership fee for 2016.

Existing law requires the State Bar to review its workload standards to measure the effectiveness and efficiency of its disciplinary activities, including, but not limited to, the State Bar Court and the Client Security Fund, and to provide guidance to the State Bar and the Legislature in allocating resources, as specified.

This bill would delete that requirement. The bill would, instead, require the State Bar to develop and implement a specified workforce plan for its discipline system and conduct a public sector compensation and benefits study to reassess the numbers and classifications of staff required to conduct the disciplinary activities. ~~This~~ *The* bill would require the State Bar to conduct a thorough analysis of its operating costs and develop a spending plan to determine a reasonable amount for the annual membership fee, as specified. The bill would require the State Bar to report to the Legislature by May 15, 2016.

Existing law requires the ~~State Bar~~ *board* to engage the services of an independent public accounting firm for an audit of its financial statement for each fiscal year.

This bill would require, effective January 1, 2016, the State Bar to contract with the California State Auditor's Office to conduct an in-depth financial audit of the State Bar, including an audit of its financial statement, internal controls, and relevant management practices, as provided, and would require the office to provide a copy of the audit to the ~~State Bar~~ *board*, the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

Under existing law, no law of this state restricting or prescribing a mode of procedure for the exercise of powers of state public bodies or state agencies is applicable to the State Bar, unless the Legislature

expressly so declares. Except as specified, existing law requires every meeting of the board to be open to the public.

Existing law, the Bagley-Keene Open Meeting Act, requires that all meetings of a state body be open and public and that all persons be permitted to attend any meeting of a state body, subject to certain conditions and exceptions. A violation of these provisions is a misdemeanor.

Existing law exempts the board from the act, but requires the board to ensure that its open meeting requirements are consistent with, and conform to, the Bagley-Keene Open Meeting Act.

Existing law, the California Public Records Act, requires state and local agencies to make public records available for inspection, subject to certain exceptions.

This bill would make the State Bar subject to the Bagley-Keene Open Meeting Act. By expanding the scope of that crime, the bill would impose a state-mandated local program. The bill would also make the State Bar subject to the California Public Records Act. The bill would make other conforming changes in this regard.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6001 of the Business and Professions
- 2 Code is amended to read:
- 3 6001. The State Bar of California is a public corporation. It is
- 4 hereinafter designated as the State Bar.

1 The State Bar has perpetual succession and a seal and it may sue
2 and be sued. It may, for the purpose of carrying into effect and
3 promoting its objectives:

4 (a) Make contracts.

5 (b) Borrow money, contract debts, issue bonds, notes and
6 debentures and secure the payment or performance of its
7 obligations.

8 (c) Own, hold, use, manage and deal in and with real and
9 personal property.

10 (d) Construct, alter, maintain and repair buildings and other
11 improvements to real property.

12 (e) Purchase, lease, obtain options upon, acquire by gift, bequest,
13 devise or otherwise, any real or personal property or any interest
14 therein.

15 (f) Sell, lease, exchange, convey, transfer, assign, encumber,
16 pledge, dispose of any of its real or personal property or any
17 interest therein, including without limitation all or any portion of
18 its income or revenues from membership fees paid or payable by
19 members.

20 (g) Do all other acts incidental to the foregoing or necessary or
21 expedient for the administration of its affairs and the attainment
22 of its purposes.

23 Pursuant to those powers enumerated in subdivisions (a) to (g),
24 inclusive, it is recognized that the State Bar has authority to raise
25 revenue in addition to that provided for in Section 6140 and other
26 statutory provisions. The State Bar is empowered to raise that
27 additional revenue by any lawful means, including, but not limited
28 to, the creation of foundations or not-for-profit corporations.

29 The State Bar shall conspicuously publicize to its members in
30 the annual dues statement and other appropriate communications,
31 including its Web site and electronic communications, that its
32 members have the right to limit the sale or disclosure of member
33 information not reasonably related to regulatory purposes. In those
34 communications the State Bar shall note the location of the State
35 Bar's privacy policy, and shall also note the simple procedure by
36 which a member may exercise his or her right to prohibit or restrict,
37 at the member's option, the sale or disclosure of member
38 information not reasonably related to regulatory purposes. On or
39 before May 1, 2005, the State Bar shall report to the Assembly
40 and Senate Committees on Judiciary regarding the procedures that

1 it has in place to ensure that members can appropriately limit the
2 use of their member information not reasonably related to
3 regulatory purposes, and the number of members choosing to
4 utilize these procedures.

5 No law of this state restricting, or prescribing a mode of
6 procedure for the exercise of powers of state public bodies or state
7 agencies, or classes thereof, including, but not by way of limitation,
8 the provisions contained in Division 3 (commencing with Section
9 11000), Division 4 (commencing with Section 16100), and Part 1
10 (commencing with Section 18000) and Part 2 (commencing with
11 Section 18500) of Division 5, of Title 2 of the Government Code,
12 shall be applicable to the State Bar, unless the Legislature expressly
13 so declares. *Notwithstanding the foregoing or any other law,*
14 *pursuant to Sections 6026.7 and 6026.11, the State Bar is subject*
15 *to the California Public Records Act (Chapter 3.5 (commencing*
16 *with Section 6250) of Division 7 of Title 1 of the Government Code)*
17 *and the Bagley-Keene Open Meeting Act (Article 9 (commencing*
18 *with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title*
19 *2 of the Government Code).*

20 *SEC. 2. Section 6026.5 of the Business and Professions Code*
21 *is amended to read:*

22 6026.5. ~~Every~~ *Pursuant to Section 6026.7, every meeting of*
23 *the board shall be open to the public except those meetings, or*
24 *portions thereof, relating to:*

25 (a) Consultation with counsel concerning pending or prospective
26 litigation.

27 (b) Involuntary enrollment of active members as inactive
28 members due to mental infirmity or illness or addiction to
29 intoxicants or drugs.

30 (c) The qualifications of judicial appointees, nominees, or
31 candidates.

32 (d) The appointment, employment or dismissal of an employee,
33 consultant, or officer of the State Bar or to hear complaints or
34 charges brought against such employee, consultant, or officer
35 unless such person requests a public hearing.

36 (e) Disciplinary investigations and proceedings, including
37 resignations with disciplinary investigations or proceedings
38 pending, and reinstatement proceedings.

1 (f) Appeals to the board from decisions of the Board of Legal
2 Specialization refusing to certify or recertify an applicant or
3 suspending or revoking a specialist's certificate.

4 (g) Appointments to or removals from committees, boards, or
5 other entities.

6 (h) Joint meetings with agencies provided in Article VI of the
7 California Constitution.

8 *SEC. 3. Section 6026.7 of the Business and Professions Code*
9 *is repealed.*

10 ~~6026.7. The board shall ensure that its open meeting~~
11 ~~requirements, as described in Section 6026.5, are consistent with,~~
12 ~~and conform to, the Bagley-Keene Open Meeting Act (Article 9~~
13 ~~(commencing with Section 11120) of Division 3 of Title 2 of the~~
14 ~~Government Code).~~

15 *SEC. 4. Section 6026.7 is added to the Business and Professions*
16 *Code, to read:*

17 *6026.7. The State Bar is subject to the Bagley-Keene Open*
18 *Meeting Act (Article 9 (commencing with Section 11120) of*
19 *Chapter 1 of Part 1 of Division 3 of Title 2 of the Government*
20 *Code) and all meetings of the State Bar are subject to the*
21 *Bagley-Keene Open Meeting Act.*

22 *SEC. 5. Section 6026.11 is added to the Business and*
23 *Professions Code, to read:*

24 *6026.11. The State Bar is subject to the California Public*
25 *Records Act (Chapter 3.5 (commencing with Section 6250) of*
26 *Division 7 of Title 1 of the Government Code) and all public*
27 *records and writings of the State Bar are subject to the California*
28 *Public Records Act.*

29 *SEC. 6. Section 6060.2 of the Business and Professions Code*
30 *is amended to read:*

31 *6060.2. All investigations or proceedings conducted by the*
32 *State Bar concerning the moral character of an applicant shall be*
33 *confidential and shall not be disclosed pursuant to any state law,*
34 *including, but not limited to, the California Public Records Act*
35 *(Chapter 3.5 (commencing with Section 6250) of Division 7 of*
36 *Title 1 of the Government Code) unless the applicant, in writing,*
37 *waives the confidentiality. However, the records of the proceeding*
38 *may be subject to lawfully issued subpoenas.*

39 *SEC. 7. Section 6086.1 of the Business and Professions Code*
40 *is amended to read:*

1 6086.1. (a) (1) Subject to subdivision (b), and except as
2 otherwise provided by law, hearings and records of original
3 disciplinary proceedings in the State Bar Court shall be public,
4 following a notice to show cause.

5 (2) Subject to subdivision (b), and except as otherwise provided
6 by law, hearings and records of the following matters shall be
7 public:

8 (A) Filings for involuntary inactive enrollment or restriction
9 under subdivision (a), (c), (d), or (e) of Section 6007.

10 (B) Petitions for reinstatement under Section 6078.

11 (C) Proceedings for suspension or disbarment under Section
12 6101 or 6102.

13 (D) Payment information from the Client Security Fund pursuant
14 to Section 6140.5.

15 (E) Actions to cease a law practice or assume a law practice
16 under Section 6180 or 6190.

17 (b) All disciplinary investigations are confidential until the time
18 that formal charges are filed and all investigations of matters
19 identified in paragraph (2) of subdivision (a) are confidential until
20 the formal proceeding identified in paragraph (2) of subdivision
21 (a) is instituted. *These investigations shall not be disclosed*
22 *pursuant to any state law, including, but not limited to, the*
23 *California Public Records Act (Chapter 3.5 (commencing with*
24 *Section 6250) of Division 7 of Title 1 of the Government Code).*
25 This confidentiality requirement may be waived under any of the
26 following exceptions:

27 (1) The member whose conduct is being investigated may waive
28 confidentiality.

29 (2) The Chief Trial Counsel or President of the State Bar may
30 waive confidentiality, but only when warranted for protection of
31 the public. Under those circumstances, after private notice to the
32 member, the Chief Trial Counsel or President of the State Bar may
33 issue, if appropriate, one or more public announcements or make
34 information public confirming the fact of an investigation or
35 proceeding, clarifying the procedural aspects and current status,
36 and defending the right of the member to a fair hearing. If the Chief
37 Trial Counsel or President of the State Bar for any reason declines
38 to exercise the authority provided by this paragraph, or disqualifies
39 himself or herself from acting under this paragraph, he or she shall
40 designate someone to act in his or her behalf. Conduct of a member

1 that is being inquired into by the State Bar but that is not the subject
2 of a formal investigation shall not be disclosed to the public.

3 (3) The Chief Trial Counsel or his or her designee may waive
4 confidentiality pursuant to Section 6044.5.

5 (c) Notwithstanding the confidentiality of investigations, the
6 State Bar shall disclose to any member of the public so inquiring,
7 any information reasonably available to it pursuant to subdivision
8 (o) of Section 6068, and to Sections 6086.7, 6086.8, and 6101,
9 concerning a member of the State Bar which is otherwise a matter
10 of public record, including civil or criminal filings and dispositions.

11 ~~SECTION 4.~~

12 *SEC. 8.* Section 6086.15 of the Business and Professions Code
13 is amended to read:

14 6086.15. (a) The State Bar shall issue an Annual Discipline
15 Report by April 30 of each year describing the performance and
16 condition of the State Bar discipline system, including all matters
17 that affect public protection. The report shall cover the previous
18 calendar year and shall include accurate and complete descriptions
19 of all of the following:

20 (1) The existing backlog of cases within the discipline system,
21 including the number of complaints as of December 31 of the
22 preceding year that were pending beyond six months after receipt
23 without dismissal, admonition, or the filing of a notice of
24 disciplinary charges. In addition to written complaints received
25 by the State Bar, the backlog of cases shall include other matters
26 opened in the Office of *the* Chief Trial Counsel and pending
27 beyond six months after receipt without the filing of notices of
28 disciplinary charges, or the initiation of other disciplinary
29 proceedings in the State Bar Court for the purpose of seeking the
30 imposition of discipline against a member of the State Bar, and
31 tables showing time periods beyond six months and the number
32 in each category and a discussion of the reason for the extended
33 periods.

34 (2) The number of inquiries and complaints and their disposition.

35 (3) The number, average pending times, and types of matters
36 self-reported by members of the State Bar pursuant to subdivision
37 (o) of Section 6068 and subdivision (c) of Section 6086.8.

38 (4) The number, average pending times, and types of matters
39 reported by other sources pursuant to Sections 6086.7, 6086.8,
40 6091.1, subdivision (b) of Section 6101, and Section 6175.6.

1 (5) The speed of complaint handling and dispositions by type,
2 measured by the median and the average processing times.

3 (6) The number, average pending times, and types of filed
4 notices of disciplinary charges and formal disciplinary outcomes.

5 (7) The number, average pending times, and types of other
6 matters, including petitions to terminate practice pursuant to
7 Section 6180 or 6190, interim suspensions and license restrictions
8 pursuant to Section 6007, motions to enforce a binding arbitration
9 award, judgment, or agreement pursuant to subdivision (d) of
10 Section 6203, motions to revoke probation, letters of warning,
11 private reprovls, admonitions, and agreements in lieu of discipline.

12 (8) The number, average pending times, and outcomes of
13 complaints involving a State Bar member who has been disbarred
14 or who has resigned, and is engaged in the unauthorized practice
15 of law, including referrals to district attorneys, city attorneys, or
16 other prosecuting authorities, or petitions to terminate practice
17 pursuant to Section 6180.

18 (9) The number, average pending times, and outcomes of
19 complaints against nonattorneys engaged in the unauthorized
20 practice of law, including referrals to district attorneys, city
21 attorneys, or other prosecuting authorities; petitions to terminate
22 practice pursuant to Section 6126.3; or referrals to prosecuting
23 authorities or actions by the State Bar pursuant to Section 6126.7.

24 (10) A description of the condition of the Client Security Fund,
25 including an accounting of payouts.

26 (11) An accounting of the cost of the discipline system by
27 function.

28 (b) The Annual Discipline Report shall include statistical
29 information presented in a consistent manner for year-to-year
30 comparison and shall compare the information required under
31 subdivision (a) to similar information for the previous three years.

32 (c) The Annual Discipline Report shall be presented to the Chief
33 Justice of California, to the Governor, to the Speaker of the
34 Assembly, to the President pro Tempore of the Senate, and to the
35 Assembly and Senate Judiciary Committees, for their consideration
36 and shall be considered a public document.

37 *SEC. 9. Section 6090.6 of the Business and Professions Code*
38 *is amended to read:*

39 6090.6. In a disciplinary proceeding, the State Bar shall have
40 access, on an ex parte basis, to all nonpublic court records relevant

1 to the competence or performance of its ~~members~~, *members*,
2 provided that these records shall remain ~~confidential~~. *confidential*
3 *and shall not be disclosed pursuant to any state law, including,*
4 *but not limited to, the California Public Records Act (Chapter 3.5*
5 *(commencing with Section 6250) of Division 7 of Title 1 of the*
6 *Government Code). This access, for investigation and enforcement*
7 *purposes, shall not be limited by any court order sealing those*
8 *records, except a court order authorized by Section 851.6, 851.7,*
9 *851.8, or 851.85 of the Penal Code. The State Bar may disclose*
10 *publicly the nature and content of those records, including sealed*
11 *records other than those specified immediately above in this*
12 *section, after notice of intention to disclose all or a part of the*
13 *records has been given to the parties in the underlying action. A*
14 *party to the underlying action who would be adversely affected*
15 *by the disclosure may serve notice on the State Bar within 10 days*
16 *of receipt of the notice of intention to disclose the records that it*
17 *opposes the disclosure and will seek a hearing in the court of*
18 *competent jurisdiction on an expedited basis.*

19 ~~SEC. 2.~~

20 *SEC. 10.* Section 6140 of the Business and Professions Code,
21 as amended by Section 3 of Chapter 429 of the Statutes of 2014,
22 is amended to read:

23 6140. (a) The board shall fix the annual membership fee for
24 active members for 2016 at a sum not exceeding three hundred
25 fifteen dollars (\$315).

26 (b) The annual membership fee for active members is payable
27 on or before the first day of February of each year. If the board
28 finds it appropriate and feasible, it may provide by rule for payment
29 of fees on an installment basis with interest, by credit card, or other
30 means, and may charge members choosing any alternative method
31 of payment an additional fee to defray costs incurred by that
32 election.

33 (c) This section shall remain in effect only until January 1, 2017,
34 and, as of that date, is repealed, unless a later enacted statute, that
35 is enacted before January 1, 2017, deletes or extends that date.

36 ~~SEC. 3.~~

37 *SEC. 11.* Section 6140.16 of the Business and Professions Code
38 is repealed.

1 ~~SEC. 4.~~

2 *SEC. 12.* Section 6140.16 is added to the Business and
3 Professions Code, to read:

4 6140.16. (a) To align its staffing with its mission to protect
5 the public as provided in Section 6001.1 and to provide guidance
6 to the State Bar and the Legislature in allocating resources, the
7 State Bar shall develop and implement a workforce plan for its
8 discipline system and conduct a public sector compensation and
9 benefits study. The workforce plan and compensation study shall
10 be used to reassess the numbers and classifications of staff required
11 to conduct the activities of the State Bar's disciplinary activities.

12 (b) The workforce planning shall include the development and
13 recommendation of an appropriate backlog goal, an assessment of
14 the staffing needed to achieve that goal while ensuring that the
15 discipline process is not compromised, and the creation of policies
16 and procedures sufficient to provide adequate guidance to the staff
17 of each unit within the discipline system.

18 (c) In addition to the requirements in subdivisions (a) and (b),
19 the State Bar shall conduct a thorough analysis of its priorities and
20 necessary operating costs and develop a spending plan, which
21 includes its fund balances, to determine a reasonable amount for
22 the annual membership fee that reflects its actual or known costs
23 and those to implement its workforce plan.

24 (d) The State Bar shall submit a report on its workforce plan
25 and spending plan to the Legislature by May 15, 2016, so that the
26 plans can be reviewed in conjunction with the bill that would
27 authorize the imposition of the State Bar's membership fee. The
28 report shall be submitted in compliance with Section 9795 of the
29 Government Code. The State Bar shall complete and implement
30 its workforce plan by December 31, 2016.

31 ~~SEC. 5.~~

32 *SEC. 13.* Section 6145 of the Business and Professions Code
33 is amended to read:

34 6145. (a) The board shall engage the services of an independent
35 national or regional public accounting firm with at least five years
36 of experience in governmental auditing for an audit of its financial
37 statement for each fiscal year. The financial statement shall be
38 promptly certified under oath by the Treasurer of the State Bar,
39 and a copy of the audit and financial statement shall be submitted
40 within 120 days of the close of the fiscal year to the board, to the

1 Chief Justice of the Supreme Court, and to the Assembly and
2 Senate Committees on Judiciary.

3 The audit shall examine the receipts and expenditures of the
4 State Bar and the State Bar sections to ensure that the receipts of
5 the sections are being applied, and their expenditures are being
6 made, in compliance with subdivision (a) of Section 6031.5, and
7 that the receipts of the sections are applied only to the work of the
8 sections.

9 The audit also shall examine the receipts and expenditures of
10 the State Bar to ensure that the funds collected on behalf of the
11 Conference of Delegates of California Bar Associations as the
12 independent successor entity to the former Conference of Delegates
13 of the State Bar are conveyed to that entity, that the State Bar has
14 been paid or reimbursed for the full cost of any administrative and
15 support services provided to the successor entity, including the
16 collection of fees or donations on its behalf, and that no mandatory
17 dues are being used to fund the activities of the successor entity.

18 In selecting the accounting firm, the board shall consider the
19 value of continuity, along with the risk that continued long-term
20 engagements of an accounting firm may affect the independence
21 of that firm.

22 (b) The board shall contract with the California State Auditor's
23 Office to conduct a performance audit of the State Bar's operations
24 from July 1, 2000, to December 31, 2000, inclusive. A copy of the
25 performance audit shall be submitted by May 1, 2001, to the board,
26 to the Chief Justice of the Supreme Court, and to the Assembly
27 and Senate Committees on Judiciary.

28 Every two years thereafter, the board shall contract with the
29 California State Auditor's Office to conduct a performance audit
30 of the State Bar's operations for the respective fiscal year,
31 commencing with January 1, 2002, to December 31, 2002,
32 inclusive. A copy of the performance audit shall be submitted
33 within 120 days of the close of the fiscal year for which the audit
34 was performed to the board, to the Chief Justice of the Supreme
35 Court, and to the Assembly and Senate Committees on Judiciary.

36 For the purposes of this subdivision, the California State
37 Auditor's Office may contract with a third party to conduct the
38 performance audit. This subdivision is not intended to reduce the
39 number of audits the California State Auditor's Office may
40 otherwise be able to conduct.

1 (c) Effective January 1, 2016, the board shall contract with the
2 California State Auditor’s Office to conduct an in-depth financial
3 audit of the State Bar, including an audit of its financial statement,
4 internal controls, and relevant management practices. The contract
5 shall include reimbursement for the California State Auditor’s
6 Office for the costs of conducting the audit. The audit shall, at a
7 minimum, examine the revenues, expenditures, and reserves of
8 the State Bar, including all fund transfers. The California State
9 Auditor’s Office shall commence the audit no later than January
10 1, 2016, and a copy of the audit shall be submitted by May 15,
11 2016, to the board, the Chief Justice of the Supreme Court, and to
12 the Assembly and Senate Committees on Judiciary. The audit shall
13 be submitted in compliance with Section 9795 of the Government
14 Code. This subdivision shall cease to be operative January 1, 2017.

15 *SEC. 14. Section 6168 of the Business and Professions Code*
16 *is amended to read:*

17 6168. The State Bar may conduct an investigation of the
18 conduct of the business of a law corporation.

19 Upon such investigation, the Board of Trustees, or a committee
20 authorized by it, shall have power to issue subpoenas, administer
21 oaths, examine witnesses, and compel the production of records,
22 in the same manner as upon an investigation or formal hearing in
23 a disciplinary matter under the State Bar Act. Such investigation
24 shall be private and ~~confidential~~, *confidential and shall not be*
25 *disclosed pursuant to any state law, including, but not limited to,*
26 *the California Public Records Act (Chapter 3.5 (commencing with*
27 *Section 6250) of Division 7 of Title 1 of the Government Code),*
28 *except to the extent that disclosure of facts and information may*
29 *be required if a cease and desist order is thereafter issued and*
30 *subsequent proceedings are had.*

31 *SEC. 15. Section 6200 of the Business and Professions Code*
32 *is amended to read:*

33 6200. (a) The board of trustees shall, by rule, establish,
34 maintain, and administer a system and procedure for the arbitration,
35 and may establish, maintain, and administer a system and procedure
36 for mediation of disputes concerning fees, costs, or both, charged
37 for professional services by members of the State Bar or by
38 members of the bar of other jurisdictions. The rules may include
39 provision for a filing fee in the amount as the board may, from
40 time to time, determine.

1 (b) This article shall not apply to any of the following:

2 (1) Disputes where a member of the State Bar of California is
3 also admitted to practice in another jurisdiction or where an
4 attorney is only admitted to practice in another jurisdiction, and
5 he or she maintains no office in the State of California, and no
6 material portion of the services were rendered in the State of
7 California.

8 (2) Claims for affirmative relief against the attorney for damages
9 or otherwise based upon alleged malpractice or professional
10 misconduct, except as provided in subdivision (a) of Section 6203.

11 (3) Disputes where the fee or cost to be paid by the client or on
12 his or her behalf has been determined pursuant to statute or court
13 order.

14 (c) Unless the client has agreed in writing to arbitration under
15 this article of all disputes concerning fees, costs, or both, arbitration
16 under this article shall be voluntary for a client and shall be
17 mandatory for an attorney if commenced by a client. Mediation
18 under this article shall be voluntary for an attorney and a client.

19 (d) The board of trustees shall adopt rules to allow arbitration
20 and mediation of attorney fee and cost disputes under this article
21 to proceed under arbitration and mediation systems sponsored by
22 local bar associations in this state. Rules of procedure promulgated
23 by local bar associations are subject to review by the board or a
24 committee designated by the board to ensure that they provide for
25 a fair, impartial, and speedy hearing and award.

26 (e) In adopting or reviewing rules of arbitration under this
27 section, the board shall provide that the panel shall include one
28 attorney member whose area of practice is either, at the option of
29 the client, civil law, if the attorney's representation involved civil
30 law, or criminal law, if the attorney's representation involved
31 criminal law, as follows:

32 (1) If the panel is composed of three members the panel shall
33 include one attorney member whose area of practice is either, at
34 the option of the client, civil or criminal law, and shall include one
35 lay member.

36 (2) If the panel is composed of one member, that member shall
37 be an attorney whose area of practice is either, at the option of the
38 client, civil or criminal law.

39 (f) In any arbitration or mediation conducted pursuant to this
40 article by the State Bar or by a local bar association, pursuant to

1 rules of procedure approved by the board of trustees, an arbitrator
2 or mediator, as well as the arbitrating association and its directors,
3 officers, and employees, shall have the same immunity which
4 attaches in judicial proceedings.

5 (g) In the conduct of arbitrations under this article the arbitrator
6 or arbitrators may do all of the following:

7 (1) Take and hear evidence pertaining to the proceeding.

8 (2) Administer oaths and affirmations.

9 (3) Issue subpoenas for the attendance of witnesses and the
10 production of books, papers, and documents pertaining to the
11 proceeding.

12 (h) Participation in mediation is a voluntary consensual process,
13 based on direct negotiations between the attorney and his or her
14 client, and is an extension of the negotiated settlement process.
15 All discussions and offers of settlement are confidential *and shall*
16 *not be disclosed pursuant to any state law, including, but not*
17 *limited to, the California Public Records Act (Chapter 3.5*
18 *commencing with Section 6250) of Division 7 of Title 1 of the*
19 *Government Code), and may not be disclosed in any subsequent*
20 *arbitration or other proceedings.*

21 *SEC. 16. Section 6232 of the Business and Professions Code*
22 *is amended to read:*

23 6232. (a) The committee shall establish practices and
24 procedures for the acceptance, denial, completion, or termination
25 of attorneys in the Attorney Diversion and Assistance Program,
26 and may recommend rehabilitative criteria for adoption by the
27 board for acceptance, denial, completion of, or termination from,
28 the program.

29 (b) An attorney currently under investigation by the State Bar
30 may enter the program in the following ways:

31 (1) By referral of the Office of the Chief Trial Counsel.

32 (2) By referral of the State Bar Court following the initiation
33 of a disciplinary proceeding.

34 (3) Voluntarily, and in accordance with terms and conditions
35 agreed upon by the attorney participant with the Office of the Chief
36 Trial Counsel or upon approval by the State Bar Court, as long as
37 the investigation is based primarily on the self-administration of
38 drugs or alcohol or the illegal possession, prescription, or
39 nonviolent procurement of drugs for self-administration, or on
40 mental illness, and does not involve actual harm to the public or

1 his or her clients. An attorney seeking entry under this paragraph
2 may be required to execute an agreement that violations of this
3 chapter, or other statutes that would otherwise be the basis for
4 discipline, may nevertheless be prosecuted if the attorney is
5 terminated from the program for failure to comply with program
6 requirements.

7 (c) Neither acceptance into nor participation in the Attorney
8 Diversion and Assistance Program shall relieve the attorney of
9 any lawful duties and obligations otherwise required by any
10 agreements or stipulations with the Office of the Chief Trial
11 Counsel, court orders, or applicable statutes relating to attorney
12 discipline.

13 (d) An attorney who is not the subject of a current investigation
14 may voluntarily enter, whether by self-referral or referral by a third
15 party, the diversion and assistance program on a confidential ~~basis~~.
16 *basis and such information shall not be disclosed pursuant to any*
17 *state law, including, but not limited to, the California Public*
18 *Records Act (Chapter 3.5 (commencing with Section 6250) of*
19 *Division 7 of Title 1 of the Government Code). Confidentiality*
20 *pursuant to this subdivision shall be absolute unless waived by the*
21 *attorney.*

22 *SEC. 17. Section 6234 of the Business and Professions Code*
23 *is amended to read:*

24 6234. Any information provided to or obtained by the Attorney
25 Diversion and Assistance Program, or any subcommittee or agent
26 thereof, shall be as follows:

27 (a) Confidential and ~~this shall not be disclosed pursuant to any~~
28 *state law, including, but not limited to, the California Public*
29 *Records Act (Chapter 3.5 (commencing with Section 6250) of*
30 *Division 7 of Title 1 of the Government Code). This confidentiality*
31 *shall be absolute unless waived by the attorney.*

32 (b) Exempt from the provisions of Section 6086.1.

33 (c) Not discoverable or admissible in any civil proceeding
34 without the written consent of the attorney to whom the information
35 pertains.

36 (d) Not discoverable or admissible in any disciplinary
37 proceeding without the written consent of the attorney to whom
38 the information pertains.

39 (e) Except with respect to the provisions of subdivision (d) of
40 Section 6232, the limitations on the disclosure and admissibility

1 of information in this section shall not apply to information relating
2 to an attorney’s noncooperation with, or unsuccessful completion
3 of, the Attorney Diversion and Assistance Program, or any
4 subcommittee or agent thereof, or to information otherwise
5 obtained by the Office of the Chief Trial Counsel, by independent
6 means, or from any other lawful source.

7 *SEC. 18. Section 6252 of the Government Code is amended to*
8 *read:*

9 6252. As used in this chapter:

10 (a) “Local agency” includes a county; city, whether general law
11 or chartered; city and county; school district; municipal
12 corporation; district; political subdivision; or any board,
13 commission or agency thereof; other local public agency; or entities
14 that are legislative bodies of a local agency pursuant to subdivisions
15 (c) and (d) of Section 54952.

16 (b) “Member of the public” means any person, except a member,
17 agent, officer, or employee of a federal, state, or local agency
18 acting within the scope of his or her membership, agency, office,
19 or employment.

20 (c) “Person” includes any natural person, corporation,
21 partnership, limited liability company, firm, or association.

22 (d) “Public agency” means any state or local agency.

23 (e) “Public records” includes any writing containing information
24 relating to the conduct of the public’s business prepared, owned,
25 used, or retained by any state or local agency regardless of physical
26 form or characteristics. “Public records” in the custody of, or
27 maintained by, the Governor’s office means any writing prepared
28 on or after January 6, 1975.

29 (f) (1) “State agency” means every state office, officer,
30 department, division, bureau, board, and commission or other state
31 body or agency, except those agencies provided for in Article IV
32 (except Section 20 thereof) or Article VI of the California
33 Constitution.

34 (2) *Notwithstanding paragraph (1) or any other law, “state*
35 *agency” shall also mean the State Bar of California, as described*
36 *in Section 6001 of the Business and Professions Code.*

37 (g) “Writing” means any handwriting, typewriting, printing,
38 photostating, photographing, photocopying, transmitting by
39 electronic mail or facsimile, and every other means of recording
40 upon any tangible thing any form of communication or

1 representation, including letters, words, pictures, sounds, or
2 symbols, or combinations thereof, and any record thereby created,
3 regardless of the manner in which the record has been stored.

4 *SEC. 19. Section 11121 of the Government Code is amended*
5 *to read:*

6 11121. As used in this article, “state body” means each of the
7 following:

8 (a) Every state board, or commission, or similar multimember
9 body of the state that is created by statute or required by law to
10 conduct official meetings and every commission created by
11 executive order.

12 (b) A board, commission, committee, or similar multimember
13 body that exercises any authority of a state body delegated to it by
14 that state body.

15 (c) An advisory board, advisory commission, advisory
16 committee, advisory subcommittee, or similar multimember
17 advisory body of a state body, if created by formal action of the
18 state body or of any member of the state body, and if the advisory
19 body so created consists of three or more persons.

20 (d) A board, commission, committee, or similar multimember
21 body on which a member of a body that is a state body pursuant
22 to this section serves in his or her official capacity as a
23 representative of that state body and that is supported, in whole or
24 in part, by funds provided by the state body, whether the
25 multimember body is organized and operated by the state body or
26 by a private corporation.

27 (e) *Notwithstanding subdivision (a) of Section 11121.1, the State*
28 *Bar of California, as described in Section 6001 of the Business*
29 *and Professions Code.*

30 *SEC. 20. Section 11121.1 of the Government Code is amended*
31 *to read:*

32 11121.1. As used in this article, “state body” does not include
33 any of the following:

34 (a) ~~State~~ *Except as provided in subdivision (e) of Section 11121,*
35 *state agencies provided for in Article VI of the California*
36 *Constitution.*

37 (b) Districts or other local agencies whose meetings are required
38 to be open to the public pursuant to the Ralph M. Brown Act
39 (Chapter 9 (commencing with Section 54950) of Part 1 of Division
40 2 of Title 5).

1 (c) State agencies provided for in Article IV of the California
2 Constitution whose meetings are required to be open to the public
3 pursuant to the Grunsky-Burton Open Meeting Act (Article 2.2
4 (commencing with Section 9027) of Chapter 1.5 of Part 1 of
5 Division 2 of Title 2).

6 (d) State agencies when they are conducting proceedings
7 pursuant to Section 3596.

8 (e) State agencies provided for in Section 109260 of the Health
9 and Safety Code, except as provided in Section 109390 of the
10 Health and Safety Code.

11 (f) The Credit Union Advisory Committee established pursuant
12 to Section 14380 of the Financial Code.

13 *SEC. 21. The Legislature finds and declares that Sections 6,
14 7, 9, 14, 15, 16, and 17 of this act impose a limitation on the
15 public's right of access to the meetings of public bodies or the
16 writings of public officials and agencies within the meaning of
17 Section 3 of Article I of the California Constitution. Pursuant to
18 that constitutional provision, the Legislature makes the following
19 findings to demonstrate the interest protected by this limitation
20 and the need for protecting that interest:*

21 *In order to allow the State Bar of California to fully accomplish
22 its objectives, including, but not limited to, its licensing, regulatory,
23 and disciplinary functions, it is imperative to protect the privacy
24 interests of those persons submitting information to the State Bar,
25 those applicants, members, and law corporations subject to
26 investigation and discipline by the State Bar, and those persons
27 participating in discussions and offers of settlement pursuant to
28 arbitration or mediation in order to ensure that any personal or
29 sensitive information is protected as confidential information.*

30 *SEC. 22. No reimbursement is required by this act pursuant
31 to Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district will be incurred because this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section 17556 of
36 the Government Code, or changes the definition of a crime within
37 the meaning of Section 6 of Article XIII B of the California
38 Constitution.*

O